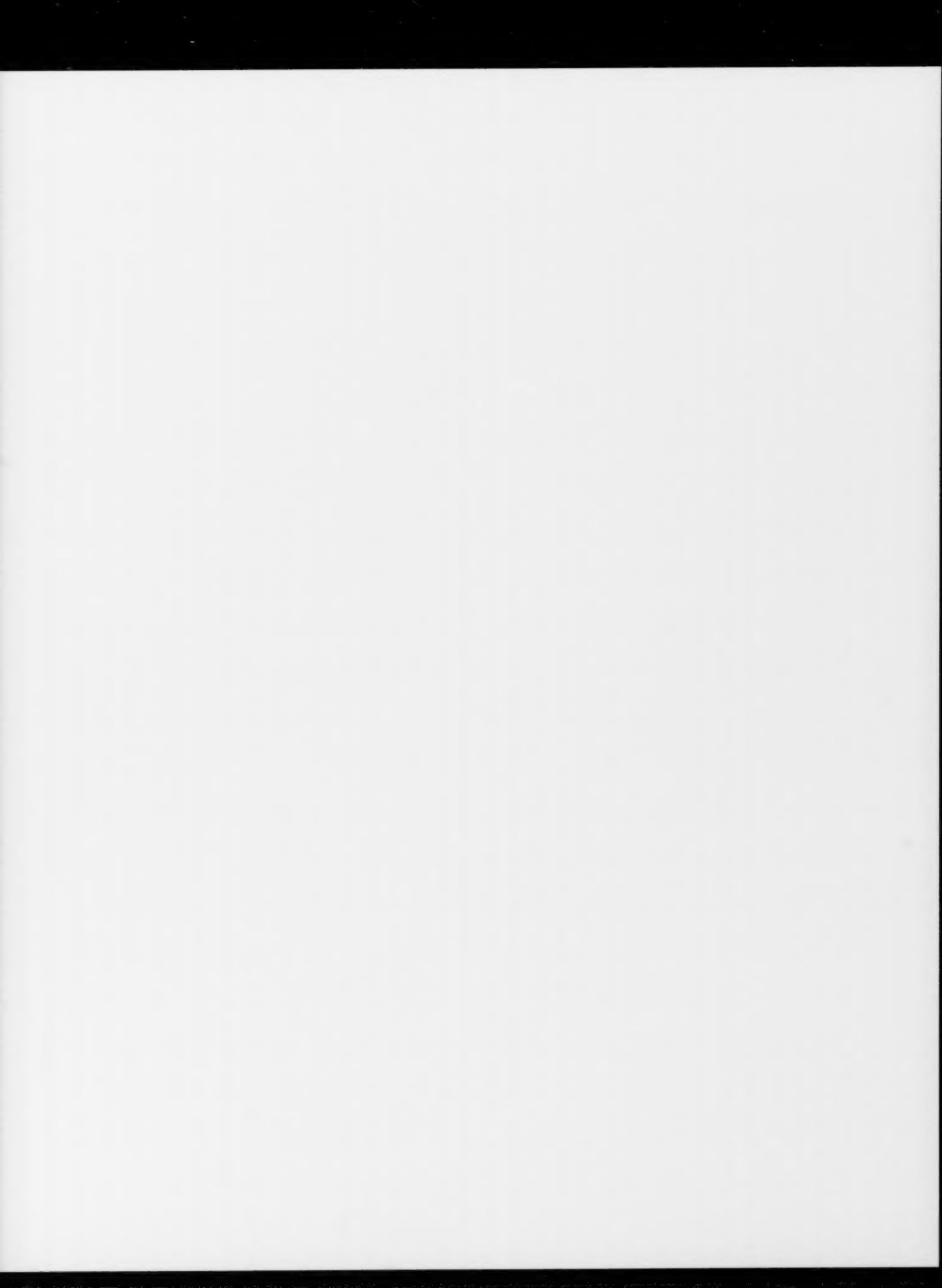


# *Special Committee to Appoint an Ombudsperson*



MAY 2012





May 9, 2012

To the Honourable  
Legislative Assembly of the  
Province of British Columbia

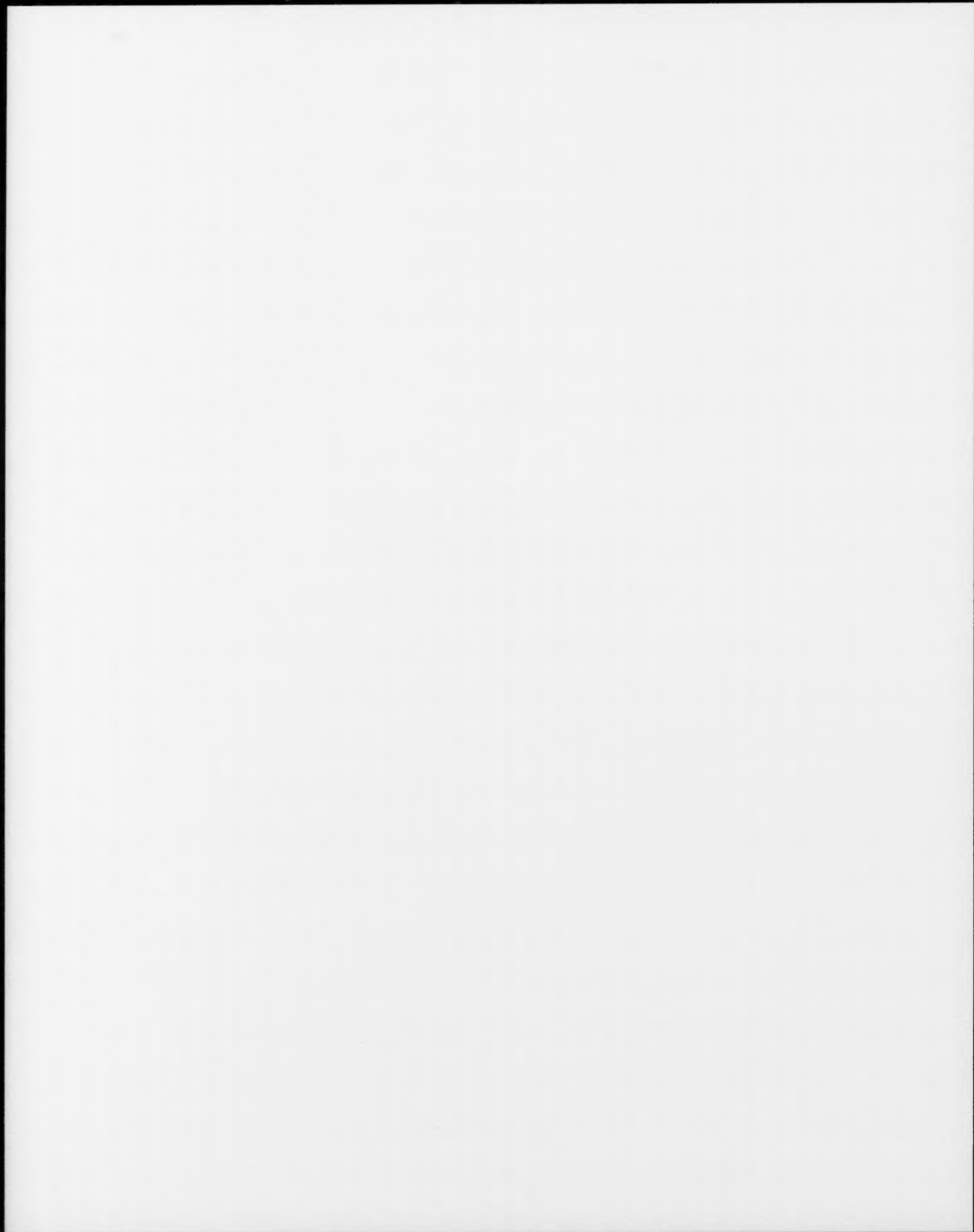
Honourable Members:

We have the honour to present herewith the Report of the Special Committee to Appoint an Ombudsperson containing our unanimous recommendation.

Respectfully submitted on behalf of the Committee,

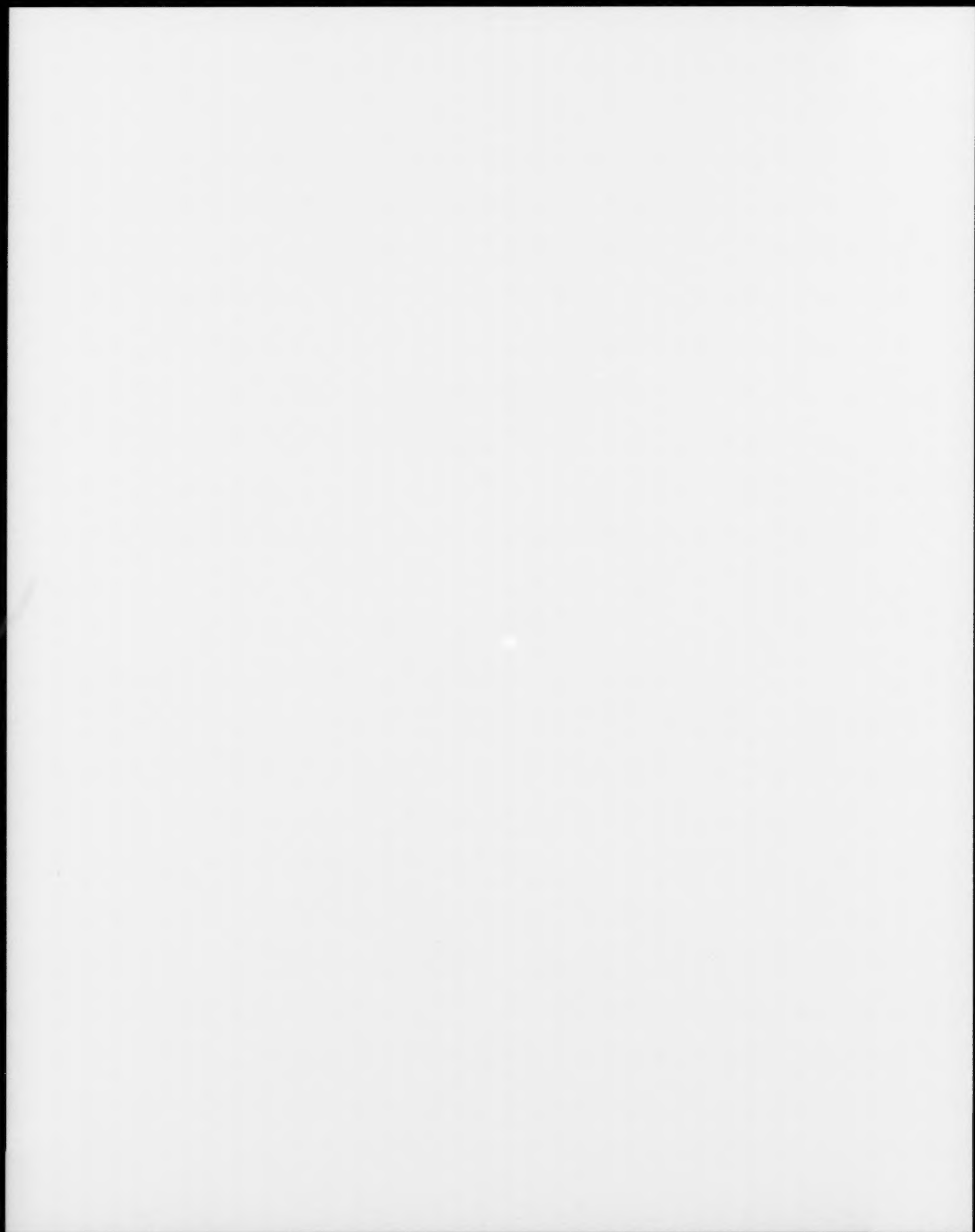
John Les, MLA  
Chair

Mable Elmore, MLA  
Deputy Chair



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## Composition of the Committee

### Members

|                         |                |                       |
|-------------------------|----------------|-----------------------|
| John Les, MLA           | (Chair)        | Chilliwack            |
| Mable Elmore, MLA       | (Deputy Chair) | Vancouver-Kensington  |
| Donna Barnett, MLA      |                | Cariboo-Chilcotin     |
| Rob Howard, MLA         |                | Richmond Centre       |
| Maurine Karagianis, MLA |                | Esquimalt-Royal Roads |

### Clerk to the Committee

Kate Ryan-Lloyd, Deputy Clerk and Clerk of Committees

## Terms of Reference

On March 15, 2012, the Legislative Assembly agreed that a Special Committee be appointed to unanimously recommend to the Legislative Assembly the appointment of an Ombudsperson, pursuant to section 2(2) of the *Ombudsperson Act* and that the said Special Committee shall have the powers of a Select Standing Committee and in addition is empowered:

- a) to appoint of their number, one or more subcommittees and to refer to such subcommittees any of the matters referred to the Committee;
- b) to sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;
- c) to adjourn from place to place as may be convenient; and
- d) to retain such personnel as required to assist the Committee;

and shall report to the House as soon as possible, or following any adjournment, or at the next following Session, as the case may be; to deposit the original of its reports with the Clerk of the Legislative Assembly during a period of adjournment and upon resumption of the sittings of the House, the Chair shall present all reports to the Legislative Assembly.



## Introduction

The role of British Columbia's Ombudsperson is to receive and investigate complaints of administrative unfairness from individuals and to generally oversee the administrative actions of provincial authorities to enhance openness, transparency and accountability. In 2009, the title of the position was changed from Ombudsman to Ombudsperson by amending the legislation.

The Ombudsperson is an independent officer of the Legislature, reporting to the Legislative Assembly through the Speaker. Section 2 of the *Ombudsperson Act* requires that a special committee of the Legislative Assembly unanimously recommend the appointment of the Ombudsperson. Section 3(1) of the *Act* stipulates that the Ombudsperson must be appointed for a term of 6 years and may be reappointed in the manner provided in section 2 for further 6-year terms.

As the first six-year term of the incumbent, Ms. Kim Carter, expires on May 14, 2012, the Legislative Assembly appointed the all-party Special Committee to Appoint an Ombudsperson on March 15. The striking of the Committee represented the sixth occasion this method of recruitment has been used. Previous committees recruited the Ombudsman in 1979, 1986, 1992, 1999 and 2006.

## Meeting Schedule

In addition to informal discussions to plan the selection process, the Committee met on the following dates for the purposes described below:

|                           |  |
|---------------------------|--|
| Monday, April 16, 2012    | Election of Chair and Deputy Chair<br>Review of terms of reference |
| Wednesday, April 25, 2012 | Interview with incumbent   |
| Wednesday, May 2, 2012    | Interview (continued)<br>Deliberations and Adoption of Report      |

## Selection Process

On April 16, 2012, the Special Committee to Appoint an Ombudsperson held its organizational meeting and reviewed its terms of reference and related briefing materials. After due consideration, the Committee decided to invite the incumbent, Ms. Kim Carter, to respond to questions regarding her application for reappointment as Ombudsperson.

The interview took place over two meetings (April 25, May 2) and confirmed the Committee's preliminary assessment of the incumbent's suitability for a second term. Members agreed Ms. Carter has shown a strong commitment to good governance in British Columbia during her first term. They were also impressed with her proposed strategic direction for the office during the next six years.

## Recommendation

The Special Committee unanimously recommends to the Legislative Assembly that Kim Carter be reappointed Ombudsperson for British Columbia, pursuant to section 2 of the *Ombudsperson Act*.

## Biographical Information



Kim Carter was appointed as British Columbia's fifth Ombudsman in May 2006 and became its first Ombudsperson in 2009 when the title of the position was changed by legislation.

As Ombudsperson Ms. Carter introduced an innovative Early Resolution Program to assist in achieving fair and timely resolutions for individuals and authorities as well as establishing an active systemic investigation team that has produced a number of useful and well-respected public reports on areas ranging from lottery prize security to home and community care programs for seniors. She served as the Chair of the Canadian Council of Parliamentary Ombudsman from 2009 to 2011.

Ms. Carter has an undergraduate degree from Glendon College, a law degree from Osgoode Hall Law School, and a Masters of Law degree from the University of Ottawa.

She served as a member of the Canadian Forces for more than 30 years as a logistics officer and a legal officer. She has a broad background in criminal, international and administrative law and has appeared as counsel before the Court Martial Appeal Court and the Supreme Court of Canada.

During her service with the Canadian Forces Ms. Carter worked in Canada and overseas in many capacities, including as leader of the Canadian War Crimes Investigation Team responsible for conducting on-site war crimes investigations in the former Yugoslavia. She was also a member of the Canadian Delegation during negotiating sessions for the International Criminal Court. In 1999 then Colonel Carter was appointed the first independent Director of Military Prosecutions for the Canadian Forces and from 2002 to 2006 she served as Canada's first female Chief Military Judge.



## Appendix A: *Ombudsperson Act* – [RSBC 1996] Chapter 340

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#### *Definition*

- 1 In this Act, "*authority*" means an authority set out in the Schedule or added under section 35 and includes members and employees of the authority.

#### *Appointment of Ombudsperson*

- 2 (1) On the recommendation of the Legislative Assembly, the Lieutenant Governor must appoint as an officer of the Legislature an Ombudsperson to exercise the powers and perform the duties assigned to the Ombudsperson under this Act.  
(2) The Legislative Assembly must not recommend a person to be appointed Ombudsperson unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed.

#### *Term of office*

- 3 (1) The Ombudsperson must be appointed for a term of 6 years and may be reappointed in the manner provided in section 2 for further 6 year terms.  
(2) The Ombudsperson must not hold another office or engage in other employment.

#### *Remuneration*

- 4 (1) The Ombudsperson is entitled to be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court.  
(2) The Ombudsperson must be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in discharging duties.

#### *Pension*

- 5 (1) Subject to subsection (2), the Public Service Pension Plan, continued under the *Public Sector Pension Plans Act*, applies to the Ombudsperson.  
(2) When calculating the amount of a pension under the Public Service Pension Plan, each year of service as Ombudsperson must be counted as 1 1/2 years of pensionable service.  
(3) [Repealed 2003-62-3.]

#### *Resignation, removal or suspension*

- 6 (1) The Ombudsperson may at any time resign the office by written notice  
(a) to the Speaker of the Legislative Assembly, or  
(b) to the Clerk of the Legislative Assembly if there is no Speaker or if the Speaker is absent from British Columbia.  
(2) On the recommendation of the Legislative Assembly, based on cause or incapacity, the Lieutenant Governor must, in accordance with the recommendation,  
(a) suspend the Ombudsperson, with or without salary, or  
(b) remove the Ombudsperson from office.  
(3) On the recommendation of the Legislative Assembly the Lieutenant Governor must appoint an acting Ombudsperson if  
(a) the Ombudsperson is suspended or removed,  
(b) the office of Ombudsperson becomes vacant for a reason other than by operation of subsection (4) (c), or  
(c) the Ombudsperson is temporarily ill or temporarily absent for another reason.  
(4) The appointment of an acting Ombudsperson under subsection (3) terminates  
(a) on the appointment of a new Ombudsperson under section 2,  
(b) at the end of the period of suspension of the Ombudsperson,

- (c) immediately after the expiry of 30 sitting days after the commencement of the next session of the Legislature, or
  - (d) on the return to office of the Ombudsperson from the temporary illness or absence whichever occurs first.
- (5) If the Legislature is not sitting and is not ordered to sit within the next 5 days, the Lieutenant Governor in Council may suspend the Ombudsperson from office, with or without salary, for cause or incapacity, but the suspension does not continue in force after the expiry of 30 sitting days.

#### *Appointment of acting Ombudsperson without recommendation of Legislature*

- 7 (1) The Lieutenant Governor in Council may appoint an acting Ombudsperson
- (a) if
    - (i) the Ombudsperson is suspended or removed, or
    - (ii) the office of Ombudsperson becomes vacant for a reason other than by operation of subsection (2) (c),
 when the Legislature is sitting but it does not make a recommendation under section 2 or 6
  - (3) before the end of that sitting or before an adjournment of the Legislature exceeding 5 days,
  - (b) if the Ombudsperson is suspended or the office of Ombudsperson becomes vacant when the Legislature is not sitting and is not ordered to sit within the next 5 days, or
  - (c) if the Ombudsperson is temporarily ill or temporarily absent for another reason.
- (2) The appointment of an acting Ombudsperson under subsection (1) terminates
- (a) on the appointment of a new Ombudsperson under section 2,
  - (b) at the end of the period of suspension of the Ombudsperson,
  - (c) immediately after the expiry of 30 sitting days after the day on which the Ombudsperson was appointed,
  - (d) on the appointment of an acting Ombudsperson under section 6 (3), or
  - (e) on the return to office of the Ombudsperson from temporary illness or absence, whichever occurs first.

#### *Staff*

- 8 (1) In accordance with the *Public Service Act*, the Ombudsperson may appoint employees necessary to perform the duties of the office.
- (2) For the purposes of the application of the *Public Service Act* to this section, the Ombudsperson is a deputy minister.
- (3) The Ombudsperson may make a special report to the Legislative Assembly if the Ombudsperson believes
- (a) the amounts and establishment provided for the office of the Ombudsperson in the estimates, or
  - (b) the services provided to the Ombudsperson by the BC Public Service Agency are inadequate to enable the Ombudsperson to fulfil the duties of the office.

#### *Confidentiality*

- 9 (1) Before beginning to perform the duties of the office, the Ombudsperson must take an oath before the Clerk of the Legislative Assembly
- (a) to faithfully and impartially exercise the powers and perform the duties of the office, and
  - (b) not to divulge any information received under this Act, except if permitted by this Act.



(2) A person on the staff of the Ombudsperson must, before beginning to perform duties, take an oath before the Ombudsperson not to divulge any information received under this Act except if permitted by this Act.

(3) For the purposes of subsection (2) the Ombudsperson is a commissioner for taking affidavits for British Columbia.

(4) The Ombudsperson and every person on the staff of the Ombudsperson must, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in performing their duties under this Act.

(5) The Ombudsperson or a person holding an office or appointment under the Ombudsperson must not give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of anything coming to his or her knowledge in the exercise of duties under this Act, except

- (a) to enforce the Ombudsperson's powers of investigation,
- (b) to enforce compliance with this Act, or
- (c) with respect to a trial of a person for perjury.

(6) An investigation under this Act must be conducted in private unless the Ombudsperson considers that there are special circumstances in which public knowledge is essential in order to further the investigation.

(7) Despite this section, the Ombudsperson may disclose or authorize a member of his or her staff to disclose a matter that, in the opinion of the Ombudsperson, is necessary to

- (a) further an investigation,
- (b) prosecute an offence under this Act, or
- (c) establish grounds for conclusions and recommendations made in a report under this Act.

#### *Powers and duties of Ombudsperson in administrative matters*

10 (1) The Ombudsperson, with respect to a matter of administration, on a complaint or on the Ombudsperson's own initiative, may investigate

- (a) a decision or recommendation made,
  - (b) an act done or omitted, or
  - (c) a procedure used
- by an authority that aggrieves or may aggrieve a person.

(2) The powers and duties conferred on the Ombudsperson may be exercised and performed despite a provision in an Act to the effect that

- (a) a decision, recommendation or act is final,
- (b) no appeal lies in respect of it, or
- (c) a proceeding or decision of the authority whose decision, recommendation or act it is must not be challenged, reviewed, quashed or called into question.

(3) The Legislative Assembly or any of its committees may at any time refer a matter to the Ombudsperson for investigation and report.

(4) The Ombudsperson must

- (a) investigate the matter referred under subsection (3), so far as it is within the Ombudsperson's jurisdiction and subject to any special directions, and
- (b) report back as the Ombudsperson thinks fit.

(5) Sections 23 to 26 do not apply in respect of an investigation or report made under subsection (4).

#### *Jurisdiction of Ombudsperson*

11 (1) This Act does not authorize the Ombudsperson to investigate a decision, recommendation, act or omission



- (a) in respect of which there is under an enactment a right of appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted under an enactment, until after that right of appeal, objection or application has been exercised or until after the time limit for the exercise of that right has expired, or
  - (b) of a person acting as a solicitor for an authority or acting as counsel to an authority in relation to a proceeding.
- (2) The Ombudsperson may investigate conduct occurring before the commencement of this Act.
- (3) If a question arises about the Ombudsperson's jurisdiction to investigate a case or class of cases under this Act, the Ombudsperson may apply to the Supreme Court for a declaratory order determining the question.

#### *Complaint to Ombudsperson*

- 12 (1) A complaint under this Act may be made by a person or group of persons.
- (2) A complaint must be in writing.
- (3) If a communication written by or on behalf of a person confined in a federal or Provincial correctional institution or to a hospital or facility operated by or under the direction of an authority, or by a person in the custody of another person for any reason, is addressed to the Ombudsperson the person in charge of the institution, hospital or facility in which the writer is confined or the person having custody of the writer must immediately, mail or forward the communication, unopened, to the Ombudsperson.
- (4) A communication from the Ombudsperson to a person confined or in custody as described in subsection (3) must be forwarded to that person in a similar manner.
- (5) Subsections (3) and (4) apply despite any other enactment.

#### *Refusal to investigate*

- 13 The Ombudsperson may refuse to investigate or cease investigating a complaint if, in the opinion of the Ombudsperson, any of the following apply:
- (a) the complainant or person aggrieved knew or ought to have known of the decision, recommendation, act or omission to which the complaint refers more than one year before the complaint was received by the Ombudsperson;
  - (b) the subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;
  - (c) the law or existing administrative procedure provides a remedy adequate in the circumstances for the person aggrieved, and, if the person aggrieved has not availed himself or herself of the remedy, there is no reasonable justification for the failure to do so;
  - (d) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter;
  - (e) having regard to all the circumstances, further investigation is not necessary in order to consider the complaint;
  - (f) in the circumstances, investigation would not benefit the complainant or person aggrieved;
  - (g) the complainant has abandoned the complaint
    - (i) by failing to advise the Ombudsperson of a current address or telephone number at which the Ombudsperson can contact him or her, or
    - (ii) by failing to respond after a reasonable number of attempts by the Ombudsperson to contact him or her in writing or verbally;
  - (h) the complaint is withdrawn by the complainant by notice to the Ombudsperson;
  - (i) the complaint is settled under section 14.

#### *Ombudsperson to notify authority*

- 14 (1) If the Ombudsperson investigates a matter, the Ombudsperson must notify the authority affected and any other person the Ombudsperson considers appropriate to notify in the circumstances.
- (2) At any time during or after an investigation the Ombudsperson may consult with an authority to attempt to settle the complaint, or for any other purpose.
- (3) If before making a decision respecting a matter being investigated the Ombudsperson receives a request for consultation from the authority, the Ombudsperson must consult with the authority.

#### *Power to obtain information*

- 15 (1) The Ombudsperson may receive and obtain information from the persons and in the manner the Ombudsperson considers appropriate, and in the Ombudsperson's discretion may conduct hearings.
- (2) Without restricting subsection (1), but subject to this Act, the Ombudsperson may do one or more of the following:
- (a) at any reasonable time enter, remain on and inspect all of the premises occupied by an authority, talk in private with any person there and otherwise investigate matters within the Ombudsperson's jurisdiction;
  - (b) require a person to furnish information or produce, at a time and place the Ombudsperson specifies, a document or thing in the person's possession or control that relates to an investigation, whether or not that person is a past or present member or employee of an authority and whether or not the document or thing is in the custody or under the control of an authority;
  - (c) make copies of information furnished or a document or thing produced under this section;
  - (d) summon before the Ombudsperson and examine on oath any person who the Ombudsperson believes is able to give information relevant to an investigation, whether or not that person is a complainant or a member or employee of an authority, and for that purpose may administer an oath;
  - (e) receive and accept, on oath or otherwise, evidence the Ombudsperson considers appropriate, whether or not it would be admissible in a court.
- (3) If the authority requests the return of a document or thing obtained under subsection (2), the Ombudsperson must return it to the authority within 48 hours after receiving the request, but the Ombudsperson may again require its production in accordance with this section.

#### *Protection*

- 16 A person must not discharge, suspend, expel, intimidate, coerce, evict, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains, gives evidence or otherwise assists in the investigation, inquiry or reporting of a complaint or other proceeding under this Act.

#### *Opportunity to make representations*

- 17 If it appears to the Ombudsperson that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect an authority or person, the Ombudsperson must, before deciding the matter,
- (a) inform the authority or person of the grounds, and
  - (b) give the authority or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsperson.

*Attorney General may restrict investigative powers*

- 18 (1) The Ombudsperson must not enter any premises and must not require any information or answer to be given or any document or thing to be produced if the Attorney General certifies that entering the premises, giving the information, answering the question or producing the document or thing might
- (a) interfere with or impede the investigation or detection of an offence,
  - (b) result in or involve the disclosure of deliberations of the Executive Council, or
  - (c) result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature and that the disclosure would be contrary or prejudicial to the public interest.
- (2) The Ombudsperson must report each certificate of the Attorney General to the Legislative Assembly not later than in the Ombudsperson's next annual report.

*Application of other laws respecting disclosure*

- 19 (1) Subject to section 18, a rule of law that authorizes or requires the withholding of a document or thing, or the refusal to disclose a matter in answer to a question, on the ground that the production or disclosure would be injurious to the public interest does not apply to production of the document or thing or the disclosure of the matter to the Ombudsperson.
- (2) Subject to section 18 and to subsection (4), a person who is bound by an enactment to maintain confidentiality in relation to or not to disclose any matter must not be required to supply any information to or answer any question put by the Ombudsperson in relation to that matter, or to produce to the Ombudsperson any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of confidentiality or nondisclosure.
- (3) Subject to section 18 but despite subsection (2), if a person is bound to maintain confidentiality in respect of a matter only because of an oath under the *Public Service Act* or a rule of law referred to in subsection (1), the person must disclose the information, answer questions and produce documents or things on the request of the Ombudsperson.
- (4) Subject to section 18, after receiving a complainant's consent in writing, the Ombudsperson may require a person described in subsection (2) to, and that person must, supply information, answer any question or produce any document or thing required by the Ombudsperson that relates only to the complainant.

*Privileged information*

- 20 (1) Subject to section 19, a person has the same privileges in relation to giving information, answering questions or producing documents or things to the Ombudsperson as the person would have with respect to a proceeding in a court.
- (2) Except on the trial of a person for perjury or for an offence under this Act, evidence given by a person in proceedings before the Ombudsperson and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceeding of a judicial nature.

*Witness and information expenses*

- 21 (1) A person examined under section 15 (2) (d) is entitled to the same fees, allowances and expenses as if the person were a witness in the Supreme Court.
- (2) If a person incurs expenses in complying with a request of the Ombudsperson for production of documents or other information, the Ombudsperson may reimburse that person for reasonable expenses incurred that are not covered under subsection (1).

*If investigation is refused or discontinued or complaint is not substantiated*

- 22 (1) If the Ombudsperson decides
- (a) not to investigate or further investigate a complaint under section 13, or
  - (b) at the conclusion of an investigation, that the complaint has not been substantiated, the Ombudsperson must
  - (c) record the decision in writing, and
  - (d) as soon as is reasonable, notify both the complainant and the authority of the decision and the reasons for it.
- (2) The reasons provided under subsection (1) (d) with respect to a decision referred to in subsection (1) (b) must be in writing.
- (3) The Ombudsperson may indicate with the notification under subsection (1) (d) any other recourse that may be available to the complainant.

*Procedure after investigation*

- 23 (1) If, after completing an investigation, the Ombudsperson is of the opinion that
- (a) a decision, recommendation, act or omission that was the subject matter of the investigation was
    - (i) contrary to law,
    - (ii) unjust, oppressive or improperly discriminatory,
    - (iii) made, done or omitted under a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory,
    - (iv) based wholly or partly on a mistake of law or fact or on irrelevant grounds or consideration,
    - (v) related to the application of arbitrary, unreasonable or unfair procedures, or
    - (vi) otherwise wrong,
  - (b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority
    - (i) did so for an improper purpose,
    - (ii) failed to give adequate and appropriate reasons in relation to the nature of the matter, or
    - (iii) was negligent or acted improperly, or
  - (c) there was unreasonable delay in dealing with the subject matter of the investigation, the Ombudsperson must report that opinion and the reasons for it to the authority and may make the recommendation the Ombudsperson considers appropriate.
- (2) Without restricting subsection (1), the Ombudsperson may recommend that
- (a) a matter be referred to the appropriate authority for further consideration,
  - (b) an act be remedied,
  - (c) an omission or delay be rectified,
  - (d) a decision or recommendation be cancelled or changed,
  - (e) reasons be given,
  - (f) a practice, procedure or course of conduct be altered,
  - (g) an enactment or other rule of law be reconsidered, or
  - (h) any other steps be taken.

*Authority to notify Ombudsperson of steps taken*

- 24 (1) If a recommendation is made under section 23, the Ombudsperson may request the authority
- (a) to notify the Ombudsperson within a specified time of the steps that have been or are proposed to be taken to give effect to the recommendation, or

- (b) if no steps have been or are proposed to be taken, the reasons for not following the recommendation.
- (2) If, after considering a response made by an authority under subsection (1), the Ombudsperson believes it advisable to modify or further modify the recommendation, the Ombudsperson must notify the authority of the recommendation as modified and may request that the authority notify the Ombudsperson
  - (a) of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or
  - (b) if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.

*Report of Ombudsperson if no suitable action taken*

- 25 (1) If within a reasonable time after a request has been made under section 24 no action is taken that the Ombudsperson believes adequate or appropriate, the Ombudsperson, after considering any reasons given by the authority, may submit a report of the matter to the Lieutenant Governor in Council and, after that, may make a report to the Legislative Assembly respecting the matter as the Ombudsperson considers appropriate.
- (2) The Ombudsperson must attach to a report under subsection (1) a copy of the Ombudsperson's recommendation and any response made to it under section 24, but the Ombudsperson must delete from the recommendation and from the response any material that would unreasonably invade any person's privacy, and may delete material revealing the identity of a member, officer or employee of an authority.

*Complainant to be informed*

- 26 (1) If the Ombudsperson makes a recommendation under section 23 or 24 and no action that the Ombudsperson believes adequate or appropriate is taken within a reasonable time, the Ombudsperson
  - (a) must inform the complainant of the recommendation and
  - (b) may make additional comments the Ombudsperson considers appropriate.
- (2) The Ombudsperson must in every case inform the complainant within a reasonable time of the result of the investigation.

*No hearing as of right*

- 27 A person is not entitled as of right to a hearing before the Ombudsperson except as provided in this Act.

*Ombudsperson not subject to review*

- 28 Proceedings of the Ombudsperson must not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction.

*Proceedings privileged*

- 29 (1) Proceedings do not lie against the Ombudsperson or against a person acting under the authority of the Ombudsperson for anything done in good faith, reported or said in the course of the exercise or purported exercise of duties under this Act.
- (2) For the purposes of any Act or law respecting libel or slander,
  - (a) anything said, all information supplied and all documents and things produced in the course of an inquiry or proceeding before the Ombudsperson under this Act are privileged to the same extent as if the inquiry or proceeding were a proceeding in a court, and



- (b) a report made by the Ombudsperson and a fair and accurate account of the report in a newspaper, periodical publication or broadcast is privileged to the same extent as if the report of the Ombudsperson were the order of a court.

#### *Delegation of powers*

- 30 (1) The Ombudsperson may in writing delegate to a person or class of persons any of the Ombudsperson's powers or duties under this Act, except the power
- (a) to delegate under this section,
  - (b) to make a report under this Act, and
  - (c) to require a production or disclosure under section 19 (1).
- (2) A delegation under this section is revocable at will and does not prevent the Ombudsperson from exercising the delegated power at any time.
- (3) A delegation may be made subject to terms the Ombudsperson considers appropriate.
- (4) If the Ombudsperson by whom a delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsperson.
- (5) A person purporting to exercise power of the Ombudsperson through a delegation under this section must, when requested to do so, produce evidence of the person's authority to exercise the power.

#### *Annual and special reports*

- 31 (1) The Ombudsperson must report annually on the affairs of the Ombudsperson's office to the Speaker of the Legislative Assembly.
- (2) The Speaker must lay the report before the Legislative Assembly as soon as possible.
- (3) If the Ombudsperson considers it to be in the public interest or in the interest of a person or authority, the Ombudsperson may make a special report to the Legislative Assembly or comment publicly about a matter relating generally to the exercise of the Ombudsperson's duties under this Act or to a particular case investigated by the Ombudsperson.

#### *Offences*

- 32 A person commits an offence who does any of the following:
- (a) without lawful justification or excuse, intentionally obstructs, hinders or resists the Ombudsperson or another person in the exercise of a power conferred or a duty imposed under this Act;
  - (b) without lawful justification or excuse, refuses or intentionally fails to comply with a lawful requirement of the Ombudsperson or another person under this Act;
  - (c) intentionally makes a false statement to or misleads or attempts to mislead the Ombudsperson or another person in the exercise of a power conferred or a duty imposed under this Act;
  - (d) violates an oath taken under this Act;
  - (e) contravenes section 16.

#### *Other remedies*

- 33 The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which
- (a) a remedy, right of appeal or objection is provided, or
  - (b) a procedure is provided for inquiry into or investigation of a matter,
- and nothing in this Act limits or affects that remedy, right of appeal, objection or procedure.

## Rules

- 34 (1) On its own initiative or on the recommendation of the Lieutenant Governor in Council the Legislative Assembly may make rules for the guidance of the Ombudsperson in exercising the powers and performing the duties of the office.
- (2) Subject to this Act and any rules made under subsection (1), the Ombudsperson may determine the Ombudsperson's procedure and the procedure for the members of the Ombudsperson's staff in exercising of the powers conferred and performing the duties imposed by this Act.

## Additions to Schedule

- 35 The Lieutenant Governor in Council may, by order, add authorities to the Schedule.

## Schedule

### Authorities

- 1 Ministries of the government.
- 2 A person, corporation, commission, board, bureau or authority who is or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are,
  - (a) appointed by an Act, minister, the Lieutenant Governor in Council,
  - (b) in the discharge of their duties, public officers or servants of the government, or
  - (c) responsible to the government.
- 3 A corporation the ownership of which or a majority of the shares of which is vested in the government.
- 4 Municipalities.
- 5 Regional districts.
- 6 The Islands Trust established under the *Islands Trust Act*.
- 7 Improvement districts as defined in the *Local Government Act*.
- 8 The Capital Improvement District under the *Capital Commission Act*.
- 9 Boards, committees, commissions or similar bodies established under the *Community Charter*, the *Local Government Act* or the *Vancouver Charter*.
- 10 The Resort Municipality of Whistler and the Whistler Resort Association.
- 11 A local trust committee, the Trust Council, the Trust Fund Board and the executive committee and persons to whom their powers are delegated under the *Islands Trust Act*.
- 12 Library boards as defined in the *Library Act*.
- 13 The Cultus Lake Park Board.
- 14 A greater board as defined in the *Community Charter*.
- 15 Development districts, water users' communities, comptroller and regional water manager under the *Water Act*.
- 16 The commissioners of a district defined in section 58 of the *Drainage, Ditch and Dike Act* and an engineer, commissioner, inspector of dikes, land settlement board, municipality or regional district acting under that Act.
- 17 The British Columbia Diking Authority and a diking authority under the *Dike Maintenance Act*.
- 18 The Okanagan Kootenay Sterile Insect Release Board.
- 19 Regional transit commissions established under the *British Columbia Transit Act*.
- 20 A corporation
  - (a) more than 50% of the issued voting shares of which are owned by one or more of the authorities listed in section 4 to 19 or this section, or

(b) that is controlled by one or more of the authorities listed in section 4 to 19 and, for the purposes of ascertaining control, a corporation is controlled by one or more of these authorities if a majority of the members of the corporation or of its board of directors or board of management consists of either or both of the following:

- (i) persons appointed as members by the authorities;
- (ii) officers or employees of an authority acting as such.

- 21 Schools and boards as defined in the *School Act*.
- 21.1 Francophone education authorities as defined in the *School Act* and francophone schools operated by francophone education authorities.
- 22 Universities as defined in the *University Act*.
- 23 The University of Northern British Columbia.
- 23.1 The Thompson Rivers University.
- 24 Royal Roads University.
- 25 Institutions as defined in the *College and Institute Act*.
- 26 Hospitals and boards of management of hospitals as defined in the *Hospital Act*.
- 27 Governing bodies of professional and occupational associations that are established or continued by an Act.
- 28 Regional Health Boards established under the *Health Authorities Act*.
- 29 Regional Hospital Districts under the *Hospital District Act*.
- 30 [Repealed 2002-35-11.]
- 31 The South Coast British Columbia Transportation Authority continued under the *South Coast British Columbia Transportation Authority Act*.
- 32 The Business Practices and Consumer Protection Authority established under the *Business Practices and Consumer Protection Authority Act*.
- 33 The Municipal Pension Board of Trustees.
- 34 The Teachers' Pension Board of Trustees.
- 35 The Public Service Pension Board of Trustees.
- 36 The College Pension Board of Trustees.
- 37 The British Columbia Safety Authority established under the *Safety Authority Act*.
- 38 The Land Title and Survey Authority established under the *Land Title and Survey Authority Act*.





